

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

REGINA S. MAESTAS,

Plaintiff,

vs.

Civ. No. 01-1080 WWD/LFG ACE

WALGREEN DRUG STORE NO. 1820,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendant's Motion to Dismiss Plaintiff's Prima Facie Tort Claim [docket no. 34] filed May 28, 2002. I have read the submissions of counsel and I have concluded that the motion is well taken and it will be granted.

Background, Discussion, and Conclusion.

Plaintiff filed a Complaint based on a relatively simple factual scenario in which Plaintiff was kicked in the crotch by a fellow employee; Plaintiff complained to management and nothing was done; and, finally, Plaintiff was late for work and was summarily discharged. All of the counts of the complaint from sex discrimination to battery are based on the same core set of facts. Plaintiff was an at-will employee of Defendant. Plaintiff was an at-will employee to whom a prima facie tort claim is not available to contest a discharge from employment; additionally, Plaintiff is not permitted to plead a prima facie tort in the alternative to the numerous other claims she makes in which unlawful conduct is alleged based on the same set of facts, when lawful conduct is an

element of a prima facie tort claim. Accordingly, Plaintiff's prima facie tort claim should be dismissed.

WHEREFORE,

IT IS ORDERED that Defendant's Motion to Dismiss Plaintiff's Prima Facie Tort Claim [docket no. 34] be, and it is hereby, **GRANTED**, and Count III of Plaintiff's Complaint is **DISMISSED WITH PREJUDICE..**


UNITED STATES MAGISTRATE JUDGE